IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 355 of 1987

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MEERABEN KIRTIDEV CHINUBHAI

Versus

LAXMI TREAMING & LACE MANUFACTURING CO,

Appearance:

1. Civil Revision Application No. 355 of 1987

MR NK MAJMUDAR for Petitioner No. 1

DELETED for Petitioner No. 2

NOTICE SERVED for Respondent No. 1-3

MR AJ PATEL for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 04/12/2004

ORAL JUDGEMENT

1. Present revisionists had preferred HRP Suit No.3173 of 1977 in the Small Causes Court at Ahmedabad against the opponents for eviction decree, on the ground of arrears of rent and subletting. The revisionists, therefore, would be addressed to as "the plaintiffs" and the opponents as "the defendants" by their respective numbers.

1.1 According to the plaintiffs, property situated at Saraspur Area, Opp. Railway Station in Ahmedabad and known as "Madhavlal Rachhodlal Colony" is owned by them. Out of the said property, property bearing Survey No.128/15 was let out to defendant no.1 as a monthly tenant at a monthly rent of Rs.73.12 paise and the defendant no.1 was required to pay monthly tax and education cess etc. Defendant no.1 - firm is of the ownership of defendant no.2. It is the case of the plaintiffs that defendant nos.1 and 2 sublet part of the property to defendant nos.3 and 4 and remaining part of the property to defendant no.5 and, therefore, a decree of eviction was sought on the ground of subletting.

2. Prior to filing of the suit, notice was given and thereafter, the suit was filed. The Trial Court, after taking into consideration the evidence on record, came to a conclusion that the plaintiffs were not able to establish that the tenants were in arrears of rent. However, the Trial Court found that part of the property was sublet and transferred to defendant nos.3 and 4 and in respect of that part of the property, a decree of eviction was passed.

2.2 The Trial Court did not accept the case of the plaintiffs against defendant no.5 for the reasons that defendant no.5 was inducted prior to appointed date and was, therefore, a protected tenant. The Trial Court also found that the plaintiffs were aware about induction of defendant no.5 in the property and had, thereby, accepted him as tenant and, therefore, the eviction was refused.

2.3 Aggrieved by the said judgment and decree rendered on 10th March,1981, the plaintiffs preferred Civil Appeal No.162 of 1981, Defendant nos.1 and 2 preferred Civil Appeal No.171 of 1981 and defendant nos.3 and 4 preferred Civil Appeal No.147 of 1981.

2.4 Defendant nos.1 and 2 ultimately withdrew their appeal bearing Civil Appeal No.177 of 1981 on 27th June,1986, so also defendant nos.3 and 4 withdrew their Civil Appeal No.147 of 1981 on the same day. The Appellate Court, after considering the contentions raised

before it, ultimately, found no substance in the appeal and dismissed the same without any order as to costs and aggrieved by the said judgment and decree, present Revision under Section 29 of the Rent Act is preferred by the landlords - plaintiffs against the original defendant no.5.

3. Heard learned Advocate Mr.Majmudar for the revisionists and learned Advocate Mr.Shital Patel for the opponent no.5.

4. Learned Advocate Mr.Majmudar in fairness submitted that the revisionists do not challenge the findings by the Courts below in respect of arrears of rent.

5. He, however, tried to assail the judgment and decree refusing eviction on the ground of subletting. He was, however, at loss to indicate any illegality or legal perversity in the order.

6. It may be noted at the outset that it is noticed and reflected from the evidence on record and recorded by both the Courts below that fact of induction of defendant no.5 was within the knowledge of the plaintiffs -landlords and that the plaintiffs have also admitted that even on 21st May,1959 defendant no.5 was in possession of the said part of the property. The Rent Act was made applicable to the former State of Bombay with effect from 13th February,1948 and prohibition on subletting came into force only thereafter. Under the circumstances, when the Courts below have come to a conclusion factually that the defendant no.5 was a protected tenant; that he was inducted prior to the stipulated date of 21st May,1959; that defendant no.5 was known to have been inducted by the plaintiffs and no objection was ever raised by them for a long spell of nearly 25 years, this Court is of the view that no interference is called for in exercise of its revisional jurisdiction.

7. It would be appropriate to rely upon a decision in the case of Champaben d/o Bhatubhai Vs. Gopinath Gangadhar (Decd.) by his Heirs Ramprakash Gopinath & Ors.,1980 GLR 709 wherein a view is taken that a sub-tenant in possession of the property would be protected by Ordinance of 1959, if he is inducted before the stipulated date of 21st May,1959. In the present case also, the defendant no.5 was inducted even prior to 1950 and as such, would be protected by the Ordinance of 1959.

8. In light of the above situation, neither of the Courts below can be said to have committed any error of law and fact. It would also be appropriate to note that in view of the fact that scope of revisional jurisdiction does not extent to re-appreciation of evidence by the Revisional Court (Patel Valmik Himatlal & Ors. Vs. Patel Mohanbhai Muljibhai (Dead) through Lrs., 1999 (1) GLR 15, Nitinkumar Sakalchand Shah Vs. Chandrahash Punjalal, 1997 (1) GLR 670), this Court is not inclined to entertain this Revision Application, it must fail and is rejected. Rule discharged. There shall be no order as to costs.

(A.L.Dave,J.)

(vipul)